

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 857**

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**Introduced by Assembly Member Fong**

February 21, 2013

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An act to amend ~~Section 9001~~ Sections 9012, 9021, 9022, 9030, and 9031 of, and to add Sections 9009.5 and 9036 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 857, as amended, Fong. ~~Elections: initiative or referendum petitions.~~ *Initiatives: petition circulators.*

(1) *The California Constitution and existing statutory law provide for the electors to propose statutes or amendments to the Constitution by initiative. Existing law authorizes a person who is a voter or who is qualified to register to vote in California to circulate an initiative or referendum petition anywhere within the state, and requires the person soliciting signatures to declare under penalty of perjury that he or she is a voter or is qualified to register to vote in the state.*

*This bill would delete the provisions providing that a person who is a voter or is qualified to vote in California is authorized to solicit signatures on an initiative or referendum petition, and requiring that person to declare under penalty of perjury that he or she is a voter or is qualified to register to vote in the state.*

(2) *Existing law requires local elections officials to perform various duties with respect to statewide initiative petitions, including determining the total number of signatures affixed to the petitions, transmitting that information to the Secretary of State, and performing a random sampling technique for verification of signatures on specified*

*petitions. Once an initiative measure is certified to have been signed by a specified number of voters, existing law provides that a petition setting forth the text of the proposed statute or amendment to the Constitution may be presented to the Secretary of State.*

*This bill would require at least 20% of the signatures on a petition for an initiative measure, and at least 20% of the signatures used to verify the qualification of an initiative measure, to be collected and submitted by persons who qualify as a person who does not receive money or other valuable consideration for the specific purpose of obtaining signatures of electors, and would require those persons to sign an affidavit under penalty of perjury, as specified. The bill would require an elections official who determines the total number of signatures affixed to a petition and an elections official or registrar of voters who verifies signatures on petitions to also determine the total number of signatures collected and submitted by persons who qualify as a person who does not receive money or other valuable consideration for the specific purpose of obtaining signatures of electors, as specified. The bill would include specified findings and declarations of the Legislature in support of these policies.*

*(3) Existing law requires every proposed initiative measure, prior to circulation, to include on the petition, among other things, the circulating title and summary prepared by the Attorney General and a heading for the initiative measure, as specified. Existing law also requires a petition for a proposed initiative or referendum measure to be presented in sections, as specified.*

*This bill would additionally require a petition for a proposed initiative measure that is circulated by persons who do not receive money or other valuable consideration for the specific purpose of obtaining signatures of electors to be printed on white paper in a contrasting color ink. The bill also would require a petition for a proposed initiative measure that is circulated by persons who do receive money or other valuable consideration for the specific purpose of obtaining signatures of electors to be printed on bright yellow paper in a contrasting color ink. The bill also would require each section of a petition for a proposed initiative measure to bear a unique identifying number.*

*(4) Because this bill would impose new requirements on local elections officials relative to calculating and verifying signatures on a petition, it would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires, prior to the circulation of an initiative or referendum petition for signatures, that the text of the proposed measure be submitted to the Attorney General with a written request that a circulating title and summary of the chief purpose and points of the proposed measure be prepared. Existing law prohibits the Attorney General's office from deeming a request for a circulating title and summary submitted until all of the requirements, as provided by law, are met.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. (a) *The Legislature finds and declares all of the*
- 2     *following:*
- 3         (1) *The power of the initiative is a fundamental right reserved*
- 4         *for the voters of California and must be protected as a means of*
- 5         *governing through direct democracy.*
- 6         (2) *The voters amended the California Constitution to reserve*
- 7         *for themselves the power of the initiative because powerful,*
- 8         *out-of-state interests, including railroad companies, exercised a*
- 9         *corrupting influence over state politics.*
- 10        (3) *The purpose of reserving the initiative power was to provide*
- 11        *individuals, communities, and coalitions a means to protect the*
- 12        *general interests of the State of California.*
- 13        (4) *For the past 30 years, a disturbing trend in the state's*
- 14        *political process has undermined the original intent of the initiative*
- 15        *power. Whereas the initiative was reserved by the voters for the*
- 16        *purpose of allowing volunteers and grassroots organizations to*
- 17        *participate in direct democracy, the initiative process has been*
- 18        *corrupted by well financed special interests.*
- 19        (5) *Whether an initiative measure qualifies for the ballot no*
- 20        *longer depends upon how much the state's voters truly support*

1 *the proposed law but, rather, depends upon how much money a*  
2 *proponent is willing to spend to place the proposal on the ballot.*

3 *(6) Whereas initiative petitions were originally circulated by*  
4 *volunteer and grassroots organizations, the demonstration of*  
5 *community support for an initiative petition has given way to paid*  
6 *circulators who work at the behest of well-funded individuals and*  
7 *organizations.*

8 *(7) In many cases, the individuals and organizations supporting*  
9 *an initiative petition do not reside in the state and will not be*  
10 *subject to the laws that they propose.*

11 *(8) The prevalence of paid circulators has led to instances of*  
12 *fraud and misrepresentation, and the erosion of public confidence*  
13 *in the initiative process. The most popular means of paying petition*  
14 *circulators is based on the number of signatures a person collects.*  
15 *Under a payment-per-signature arrangement, a paid circulator*  
16 *has no incentive to educate voters about an initiative petition but,*  
17 *instead, is motivated solely to gather as many signatures as*  
18 *possible. In their quest for economic gain, paid circulators often*  
19 *purposefully mislead voters and leave the public in the dark about*  
20 *the true content of initiative petitions.*

21 *(9) The use of paid circulators has been associated with coercive*  
22 *and misleading tactics to collect signatures from the public. As a*  
23 *result, the public is dissatisfied with the initiative process.*

24 *(10) The presence of an initiative measure on the ballot is no*  
25 *longer viewed as an expression of a minimum amount of public*  
26 *support but, rather, the willingness of a special interest to pay a*  
27 *sufficient number of petition circulators to use whatever means*  
28 *necessary to qualify the initiative measure for the ballot.*

29 *(11) The statewide election ballot is increasingly cluttered with*  
30 *initiative measures that do not have enough public support to*  
31 *justify the expenses of administering the election for those*  
32 *particular proposals. Additionally, voters have been overwhelmed*  
33 *by the number and complexity of the proposals.*

34 *(12) The Legislature is responsible for providing the manner*  
35 *in which initiative petitions are circulated, presented, and certified.*  
36 *Consistent with this constitutional duty, the Legislature must*  
37 *provide for laws that are consistent with the original intent of the*  
38 *voters in reserving the power of the initiative; protect the integrity*  
39 *of the initiative process; and prevent the occurrence of fraud and*

1 *misrepresentation in the circulation, presentation, and certification*  
2 *of initiative petitions.*

3 *(b) Therefore, it is the intent of the Legislature to do all of the*  
4 *following:*

5 *(1) Preserve and protect the integrity of California's initiative*  
6 *process.*

7 *(2) Ensure that initiative petitions have sufficient grassroots*  
8 *support to be placed on the ballot.*

9 *(3) Protect access to the initiative process and preserve the*  
10 *constitutional right of voters in California to engage in direct*  
11 *democracy.*

12 *SEC. 2. Section 9009.5 is added to the Elections Code, to read:*

13 *9009.5. (a) A petition for a proposed initiative measure that*  
14 *is circulated by a person who does not receive money or other*  
15 *valuable consideration for the specific purpose of obtaining*  
16 *signatures of electors, as described in subdivision (c) of Section*  
17 *9036, shall be printed on white paper in a contrasting color ink.*

18 *(b) A petition for a proposed initiative measure that is circulated*  
19 *by a person who receives money or other valuable consideration*  
20 *for the specific purpose of obtaining signatures of electors shall*  
21 *be printed on bright yellow paper in a contrasting color ink.*

22 *SEC. 3. Section 9012 of the Elections Code is amended to read:*

23 *9012. ~~Any~~(a) A petition for a proposed initiative ~~measure~~ or*  
24 *referendum ~~measure~~ may be presented in sections, but each section*  
25 *shall contain a full and correct copy of the circulating title and*  
26 *summary and text of the proposed measure. ~~The~~*

27 *(b) Each section of a petition for a proposed initiative measure*  
28 *shall bear a unique identifying number.*

29 *(c) The text of the proposed initiative or referendum measure*  
30 *shall be printed in type not smaller than 8 point.*

31 *SEC. 4. Section 9021 of the Elections Code is amended to read:*

32 *9021. ~~A person who is a voter or who is qualified to register~~*  
33 *~~to vote in this state may circulate an initiative or referendum~~*  
34 *~~petition anywhere within the state. Each section of the a petition~~*  
35 *~~for a proposed initiative or referendum measure shall bear the~~*  
36 *~~name of a county or city and county, and only qualified registered~~*  
37 *~~voters of that county or city and county may sign that section.~~*

38 *~~The section. The circulator may sign the section he or she is~~*  
39 *~~circulating as provided in Section 106.~~*

40 *SEC. 5. Section 9022 of the Elections Code is amended to read:*

1 9022. (a) Each section of a petition for a proposed initiative  
 2 or referendum measure shall have attached thereto the declaration  
 3 of the person soliciting the signatures setting forth the information  
 4 required by Section 104 ~~and stating that the circulator is a voter~~  
 5 ~~or is qualified to register to vote in the state.~~  
 6 (b) A person who qualifies to collect and submit signatures for  
 7 a proposed initiative measure and who is a person who does not  
 8 receive money or other valuable consideration for the specific  
 9 purpose of obtaining signatures of electors within the meaning of  
 10 subdivision (c) of Section 9036 shall sign an affidavit that is  
 11 prepared by the Secretary of State and that declares all of the  
 12 following:  
 13 (1) The person is a person who does not receive money or other  
 14 valuable consideration for the specific purpose of obtaining  
 15 signatures of electors within the meaning of subdivision (c) of  
 16 Section 9036.  
 17 (2) To the best of his or her knowledge, the signatures on the  
 18 petition sections circulated by him or her should be counted  
 19 towards the requirements set forth in subdivisions (a) and (b) of  
 20 Section 9036.  
 21 (3) The person's current place of permanent residence.  
 22 (4) If the person is not a resident of the state, he or she consents  
 23 to both of the following:  
 24 (A) The jurisdiction of the state for purposes of an investigation  
 25 or prosecution by any state or local agency regarding the validity  
 26 of the signatures submitted by him or her.  
 27 (B) Service of process for any legal action pertaining to an  
 28 investigation or prosecution by any state or local agency regarding  
 29 the validity of the signatures submitted by him or her.  
 30 ~~(b)~~  
 31 (c) The circulator shall certify to the content of the declaration  
 32 as to its truth and correctness, under penalty of perjury under the  
 33 laws of the State of California, with the signature of his or her  
 34 name. The circulator shall state the date and the place of execution  
 35 on the declaration immediately preceding his or her signature.  
 36 ~~Another declaration thereto may not be required.~~  
 37 (d) Petitions so verified shall be prima facie evidence that the  
 38 signatures thereon are genuine and that the persons signing are  
 39 qualified voters. Unless ~~and until~~ otherwise proven upon official

1 investigation, it shall be presumed that the petition presented  
2 contains the signatures of the requisite number of qualified voters.

3 *SEC. 6. Section 9030 of the Elections Code is amended to read:*

4 9030. (a) Each section of the petition shall be filed with the  
5 elections official of the county or city and county in which it was  
6 circulated, but all sections circulated in any county or city and  
7 county shall be filed at the same time. Once filed, no petition  
8 section shall be amended except by order of a court of competent  
9 jurisdiction.

10 (b) Within eight days after the filing of the petition, excluding  
11 Saturdays, Sundays, and holidays, the elections official shall  
12 determine the total number of signatures affixed to the petition  
13 and, *in the case of an initiative petition, the total number of*  
14 *signatures submitted by persons who qualify under subdivision*  
15 *(c) of Section 9036. The elections official shall transmit this*  
16 *information to the Secretary of State. If the total number of*  
17 *signatures filed with all elections officials is less than 100 percent*  
18 *of the number of qualified voters required to find the petition*  
19 *sufficient, or in the case of an initiative petition the number of*  
20 *signatures submitted by persons who qualify under subdivision*  
21 *(c) of Section 9036 is less than 20 percent of the total number of*  
22 *signatures submitted, the Secretary of State shall so notify the*  
23 *proponents and the elections officials, and no further action shall*  
24 *be taken with regard to the petition.*

25 (c) If the number of signatures filed with all elections officials  
26 is 100 percent or more of the number of qualified voters needed  
27 to declare the petition sufficient *and, in the case of an initiative*  
28 *petition, the percentage of signatures submitted by persons who*  
29 *qualify under subdivision (c) of Section 9036 is equal to or greater*  
30 *than 20 percent of the number of signatures submitted, the*  
31 *Secretary of State shall immediately so notify the elections*  
32 *officials.*

33 (d) Within 30 days after this notification, excluding Saturdays,  
34 Sundays, and holidays, the elections official shall determine the  
35 number of qualified voters who have signed the petition. If more  
36 than 500 names have been signed on sections of the petition filed  
37 with an elections official, the elections official shall use a random  
38 sampling technique for verification of signatures, as determined  
39 by the Secretary of State. The random sample of signatures to be  
40 verified shall be drawn in such a manner that every signature filed

1 with the elections official shall be given an equal opportunity to  
2 be included in the sample. The random sampling shall include an  
3 examination of at least 500 or 3 percent of the signatures,  
4 whichever is greater. In determining from the records of registration  
5 ~~what~~ *the* number of qualified voters *who* have signed the petition,  
6 the elections official may use the duplicate file of affidavits of  
7 registered voters or the facsimiles of voters' signatures, provided  
8 that the method of preparing and displaying the facsimiles complies  
9 with law.

10 (e) The elections official, upon the completion of the  
11 examination, shall immediately attach to the petition, except the  
12 signatures thereto appended, a properly dated ~~certificate~~, *certificate*  
13 showing the result of the examination, *including, in the case of an*  
14 *initiative petition, the total number of qualified voters who signed*  
15 *the sections of the petition submitted by persons who qualify under*  
16 *subdivision (c) of Section 9036*, and shall immediately transmit  
17 the petition and the certificate to the Secretary of State. A copy of  
18 this certificate shall be filed in the elections official's office.

19 (f) If the certificates received from all elections officials by the  
20 Secretary of State establish that the number of valid signatures  
21 does not equal 95 percent of the number of qualified voters needed  
22 to find the petition sufficient *or, in the case of an initiative petition,*  
23 *that the number of valid signatures submitted by persons who*  
24 *qualify under subdivision (c) of Section 9036 does not equal 95*  
25 *percent of the number of qualified voters needed to satisfy the*  
26 *requirements of Section 9036*, the petition shall be deemed to have  
27 failed to qualify, and the Secretary of State shall immediately so  
28 notify the proponents and the elections officials.

29 (g) If the certificates received from all elections officials by the  
30 Secretary of State total more than 110 percent of the number of  
31 qualified voters needed to find the petition sufficient *and, in the*  
32 *case of an initiative petition, the number of valid signatures*  
33 *submitted by persons who qualify under subdivision (c) of Section*  
34 *9036 total more than 110 percent of the number of qualified voters*  
35 *needed to satisfy the requirements of Section 9036*, the petition  
36 shall be deemed to qualify as of the date of receipt by the Secretary  
37 of State of certificates showing the petition to have reached the  
38 110 percent, and the Secretary of State shall immediately so notify  
39 the proponents and the elections officials.

1     *(h) The Secretary of State shall enact regulations consistent*  
2 *with this section.*

3     *SEC. 7. Section 9031 of the Elections Code is amended to read:*

4     9031. (a) If the statistical sampling shows that the number of  
5 valid signatures is within 95 to 110 percent of the number of  
6 signatures of qualified voters needed to declare the petition  
7 sufficient *or, in the case of an initiative petition, the number of*  
8 *valid signatures collected by persons who qualify under subdivision*  
9 *(c) of Section 9036 is within 95 to 110 percent of the number of*  
10 *signatures required by Section 9036, the Secretary of State shall*  
11 *order the examination and verification of each signature filed, and*  
12 *shall so notify the elections officials.*

13     (b) Within 30 days, excluding Saturdays, Sundays, and holidays,  
14 after receipt of the order, the elections official or registrar of voters  
15 shall determine from the records of registration ~~what~~ *the number*  
16 *of qualified voters who have signed the petition and, in the case*  
17 *of an initiative petition, the number of qualified voters who have*  
18 *signed sections of the petition submitted by persons who qualify*  
19 *under subdivision (c) of Section 9036, and if necessary the board*  
20 *of supervisors shall allow the elections official or registrar*  
21 *additional assistance for the purpose of examining the petition and*  
22 *provide for their compensation. In determining from the records*  
23 *of registration* ~~what~~ *the number of qualified voters who have signed*  
24 *the petition, the elections official or registrar of voters may use*  
25 *any file or list of registered voters maintained by his or her office,*  
26 *or the facsimiles of voters' signatures, provided that the method*  
27 *of preparing and displaying the facsimiles complies with law.*

28     (c) The elections official or registrar, upon the completion of  
29 the examination, shall immediately attach to the petition, except  
30 the signatures thereto appended, an amended certificate properly  
31 dated, showing the result of the examination and shall immediately  
32 transmit the petition, together with the amended certificate, to the  
33 Secretary of State. A copy of the amended certificate shall be filed  
34 in the elections official's office.

35     (d) (1) If the amended certificates establish the petition's  
36 sufficiency, the petition shall be deemed to be filed as of the date  
37 of receipt by the Secretary of State of certificates showing the  
38 petition to be signed by the requisite number of voters of the state.

39     (2) If the amended certificates received from all elections  
40 officials by the Secretary of State establish that the petition has

1 still been found insufficient, the Secretary of State shall  
2 immediately so notify the proponents and the elections officials.

3 *SEC. 8. Section 9036 is added to the Elections Code, to read:*

4 *9036. (a) At least 20 percent of the signatures of registered*  
5 *voters collected and submitted pursuant to Section 9035 shall have*  
6 *been obtained by persons who do not receive money or other*  
7 *valuable consideration for the specific purpose of obtaining*  
8 *signatures of electors on a petition for a proposed initiative*  
9 *measure.*

10 *(b) At least 20 percent of the signatures collected and used to*  
11 *verify the qualification of an initiative measure pursuant to Sections*  
12 *9030 and 9031 shall have been obtained by persons who do not*  
13 *receive money or other valuable consideration for the specific*  
14 *purpose of obtaining signatures of electors on a petition for a*  
15 *proposed initiative measure.*

16 *(c) For purposes of this article, the following persons qualify*  
17 *as a “person who does not receive money or other valuable*  
18 *consideration for the specific purpose of obtaining signatures of*  
19 *electors”:*

20 *(1) A person who does not receive money or other valuable*  
21 *consideration exclusively or primarily for the purpose of obtaining*  
22 *signatures of electors on a petition for a proposed initiative*  
23 *measure.*

24 *(2) A person who is an employee of an organization, other than*  
25 *an organization in the business of collecting signatures on initiative*  
26 *petitions, who is paid by the organization and as part of that*  
27 *employment obtains signatures for the qualification of an initiative*  
28 *measure.*

29 *(d) This section shall not be construed to preclude a person who*  
30 *receives nominal, non-monetary benefits, including food,*  
31 *transportation, or lodging, from qualifying under subdivision (c).*

32 *SEC. 9. If the Commission on State Mandates determines that*  
33 *this act contains costs mandated by the state, reimbursement to*  
34 *local agencies and school districts for those costs shall be made*  
35 *pursuant to Part 7 (commencing with Section 17500) of Division*  
36 *4 of Title 2 of the Government Code.*

37 ~~SECTION 1. Section 9001 of the Elections Code is amended~~  
38 ~~to read:~~

39 ~~9001. (a) Prior to the circulation of an initiative or referendum~~  
40 ~~petition for signatures, the text of the proposed measure shall be~~

1 submitted to the Attorney General with a written request that a  
2 circulating title and summary of the chief purpose and points of  
3 the proposed measure be prepared. The electors presenting the  
4 request shall be known as the “proponents.” The Attorney General  
5 shall preserve the written request until after the next general  
6 election.

7 (b) Each proponent of a proposed initiative measure shall, at  
8 the time of submitting the text of the proposed measure, provide  
9 both of the following:

10 (1) An original signed certification stating that “I, (insert name),  
11 declare under penalty of perjury that I am a citizen of the United  
12 States, 18 years of age or older, and a resident of (insert county),  
13 California.”

14 (2) Public contact information.

15 (c) The proponents of an initiative measure, at the time of  
16 submitting the text of the proposed measure to the Attorney  
17 General, shall pay a fee of two hundred dollars (\$200), which shall  
18 be placed in a trust fund in the office of the Treasurer and refunded  
19 to the proponents if the measure qualifies for the ballot within two  
20 years from the date the summary is furnished to the proponents.  
21 If the measure does not qualify within that period, the fee shall be  
22 immediately paid into the General Fund of the state.

23 (d) All referenda and proposed initiative measures must be  
24 submitted to the Attorney General’s Initiative Coordinator located  
25 in the Sacramento Attorney General’s Office via U.S. Postal  
26 Service, alternative mail service, or personal delivery. Only printed  
27 documents will be accepted, facsimile or e-mail delivery will not  
28 be accepted.

29 (e) The Attorney General shall not deem a request for a  
30 circulating title and summary submitted until all of the  
31 requirements of this section are met.